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APPLICATION OF

**VIRGINIA ELECTRIC AND POWER COMPANY
D/B/A DOMINION VIRGINIA POWER**

CASE NO. PUE010154

**For a certificate of public convenience
and necessity for facilities in Loudoun
County: Beaumeade-Beco 230 kV
Transmission Line and Beaumeade-
Greenway 230 kV Transmission Line**

HEARING EXAMINER'S RULING

August 7, 2001

On March 15, 2001, as revised on March 23, 2001, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Virginia Power" or "Company") filed an application for approval and certification of electric facilities in eastern Loudoun County. By Commission orders dated April 9, and 12, 2001, the Commission docketed the application; appointed a hearing examiner to conduct further proceedings; established a procedural schedule for the filing of prepared testimony and exhibits; scheduled a hearing in Leesburg, Virginia; and directed Virginia Power to provide public notice of its application.

On July 11, 2001, Protestant Regency Homeowners Association, Inc. ("Regency"), by counsel, filed a special motion seeking a ruling on the validity of Virginia Power's objections to the second set of interrogatories propounded by Regency. Regency requests that the Company be compelled to provide the information sought in interrogatories one through eight, subject to safeguards designed to protect the legitimate privacy interests of the Company's customers. Specifically, Regency seeks the identities, locations, and actual or projected demands of the data center developers and potential customers upon which Virginia Power determined the need for its proposed new facilities. Further, Regency indicates that "[i]t is vital . . . [for it] to obtain the information sought so that it can contact the developers and owners of the alleged planned data centers, so that it can verify the claims the company has made in its application."¹

On July 20, 2001, Broadlands Associates joined Regency, citing its own need to assess independently the Company's calculations of future "needs."

On July 25, 2001, Virginia Power filed its response in which it stated that it has provided:

actual electric load information for each of the 11 data centers in eastern Loudoun County to which the Company has recently commenced electric service (Responses 1 and 2); the month and year of projected in-service dates and electric loads of each of 18

¹ Regency Special Motion at ¶ 8.

additional data center customers that have entered into contracts with Company for electric service (Responses 3 and 4); the requested electric service load of each of 21 additional prospective data center customers that have contacted the Company to discuss contracting for electric service (Response 6) and; the estimated electrical loads of each of seven additional data center developments which the Company are aware are being considered in eastern Loudoun County.²

Nonetheless, Virginia Power declined to identify specific customers or to provide specific information related to an identified customer.³ Virginia Power characterizes Regency's intention to contact customers or potential customers as unprecedented and likely to introduce a chaotic element into the proceeding.⁴ More importantly, Virginia Power refuses to provide customer identities and records on the grounds of privacy. The Company submits "it would be particularly unfair to subject non-parties to exposure to 'harassment, inconvenience, or disclosure of confidential documents' without their knowledge that such a threat exists."⁵

In addition, Virginia Power objected to Regency's request for its policies and procedures relating to the retention and destruction of electronic mail on the basis of relevancy.

Rule 5 VAC 5-20-260 of the Commission's Rules of Practice and Procedure, which became effective on June 1, 2001, continues to provide a broad standard for discovery.

Interrogatories . . . may relate to any matter not privileged, which is relevant to the subject matter involved. . . . It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.⁶

In this case, Regency seeks information from Virginia Power that would provide Regency with direct access to the Company's customers or potential customers. I am unaware of any instance where the Commission has sanctioned such access. Indeed, as noted by Virginia Power, the Commission has adopted rules designed to protect the privacy interests of energy customers within the Commonwealth.⁷ On the other hand, Virginia Power stakes its need for the proposed power line almost entirely upon its projected energy demands of data centers. These projected demands appear to go beyond extrapolations of historic usage. Consequently, Regency seeks access to the underlying source of the Company's projections.

² Virginia Power Response at 1-2.

³ *Id.* at 2.

⁴ *Id.* at 3-4.

⁵ *Id.* at 5.

⁶ 5 VAC 5-20-260.

⁷ *See*, 20 VAC 5-312-60.

In essence, the analysis boils down to a weighing of the privacy interests of Virginia Power's customers against Regency's interest in examining or testing Virginia Power's projections. As Virginia Power explains:

the Company has received information from some of the data centers proposing to locate in eastern Loudoun County only after signing confidentiality agreements. Customers have no choice but to disclose information to the Company that may be commercially sensitive, and those customers expect that the information will be protected from disclosure.⁸

Generally, under its obligation to serve, an electric utility must construct facilities in advance of their need. To accomplish this, electric utilities must collect information on the business plans and strategies of its customers and potential customers. Because public disclosure of that information could put customers at a competitive disadvantage and to facilitate the provision of this needed data, customer information, in general, and customer identities, in particular, are treated confidentially by both utilities and the Commission. In this case, direct customer contact by a litigant could have a negative effect on the flow of information available to Virginia Power for planning its system. Being questioned by attorneys and experts, along with the prospect of being subpoenaed to testify publicly, could have a chilling effect on Virginia Power's efforts to obtain sensitive information from prospective customers in the future.

Moreover, the burden of proving the need for the proposed power line rests upon Virginia Power. Greater weight, in varying degrees, likely will be given to actual results and contractual obligations rather than estimates and forecasts. Further, given the perceived recent downturn in the fortunes of .com businesses, more current forecasts and information likely will be more persuasive than forecasts from one or two years ago.

Accordingly, based on the importance of protecting the privacy interests of utility customers and based upon Virginia Power bearing the burden of proving the need for the proposed power line, I hereby deny Regency's special motion and find that Virginia Power should not be compelled to identify the names and business addresses of its current and prospective customers.

Alexander F. Skirpan, Jr.
Hearing Examiner

⁸ Virginia Power Response at 4.